

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

SHEILA UPCHURCH,

Plaintiff,

vs.

**JO ANNE B. BARNHART,
Commissioner of Social Security,**

Defendant.

)
)
)
)
)
)
)
)
)
)
)

Case No. 4:05CV 742 DJS(LMB)

**REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

This is an action under 42 U.S.C. § 405(g) for judicial review of defendant's final decision denying Sheila Upchurch's application for Disability Insurance Benefits under Title II of the Social Security Act. This case has been referred to the undersigned United States Magistrate Judge for a Report and Recommendation pursuant to 28 U.S.C. § 636(b). Currently pending is defendant's Motion to Reverse and Remand with Suggestions in Support (Document Number 15). Plaintiff has not filed a response.

Defendant in her motion requests that the court reverse the decision of the Administrative Law Judge (ALJ) and remand this action pursuant to sentence four of 42 U.S.C. § 405(g). Defendant further states in her motion that upon receipt of the court's remand order, the Appeals Council of the Social Security Administration will remand this case to an ALJ who will be directed to obtain opinion evidence regarding plaintiff's physical and mental impairments, including the effects of substance abuse. The ALJ will also be directed to provide a discussion of plaintiff's substance abuse consistent with Eighth Circuit law and the regulations. The ALJ will be directed to obtain vocational expert

testimony and resolve any discrepancies between the testimony and the Dictionary of Occupational Titles. Finally, the ALJ will be directed to consolidate the current case with plaintiff's subsequent application. Defendant requests that the court enter a final judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure reversing the decision of the ALJ and remanding this case to the Commissioner.

Sentence four of 42 U.S.C. § 405(g) provides that "[t]he court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for rehearing." However, in order for the court to properly remand a case to the Commissioner pursuant to sentence four, the court must enter an order either affirming, modifying or reversing the Commissioner's decision. See Brown v. Barnhart, 282 F.3d 580, 581 (8th Cir. 2002).

The undersigned believes that it is appropriate to reverse and remand this case in order to permit the Commissioner to take further action as requested in her motion.

Accordingly,


IT IS HEREBY RECOMMENDED that Defendant's Motion to Reverse and Remand with Suggestions in Support (Doc. No. 15) be **granted**.

IT IS FURTHER RECOMMENDED that the decision of the Commissioner be **reversed** and this case be **remanded** to the Commissioner for further proceedings pursuant to sentence four of § 405(g) for those reasons set forth in this report and recommendation.

IT IS FURTHER RECOMMENDED that upon remand, the court not retain jurisdiction of this matter.

The parties are advised that they have eleven (11) days in which to file written objections to this Report and Recommendation pursuant to 28 U.S.C. § 636(b)(1), unless an extension of time for good cause is obtained, and failure to file timely objections may result in a waiver of the right to appeal questions of fact. See Thompson v. Nix, 897 F.2d 356, 357 (8th Cir. 1990).

Dated this 28th day of November, 2005.

A handwritten signature in blue ink that reads "Lewis M. Blanton". The signature is written in a cursive style with a horizontal line underneath it.

LEWIS M. BLANTON
UNITED STATES MAGISTRATE JUDGE